# 10 Eight

In Service for Arkansas Law Enforcement

Arkansas Attorney General Mike Beebe

Volume 16 Number 2 July 2006


## Dear Ten-Eight Reader:

It's time to start planning for our 2006 Law Enforcement Summit, which will be held in Little Rock on October 11, 2006. The conference will focus on crimes against children, with special emphasis on computer-facilitated crimes. The Summit will also honor outstanding law-enforcement officers who have been nominated for acts of valor performed in the line of duty and/or who have been cited for meritorious job performance within the last eighteen months. Details about how to participate are included in this issue of 10-8.

We owe a huge debt of thanks to law-enforcement personnel for your willingness to provide courageous service, for your devotion to duty, and for your regard for the safety of all Arkansans. We look forward to receiving your nominations.

Sincerely,

Mike Beebe



## Warrantless Home Entry Allowed by Fourth Amendment in Certain Instances

By Karen Wallace, Assistant Attorney General

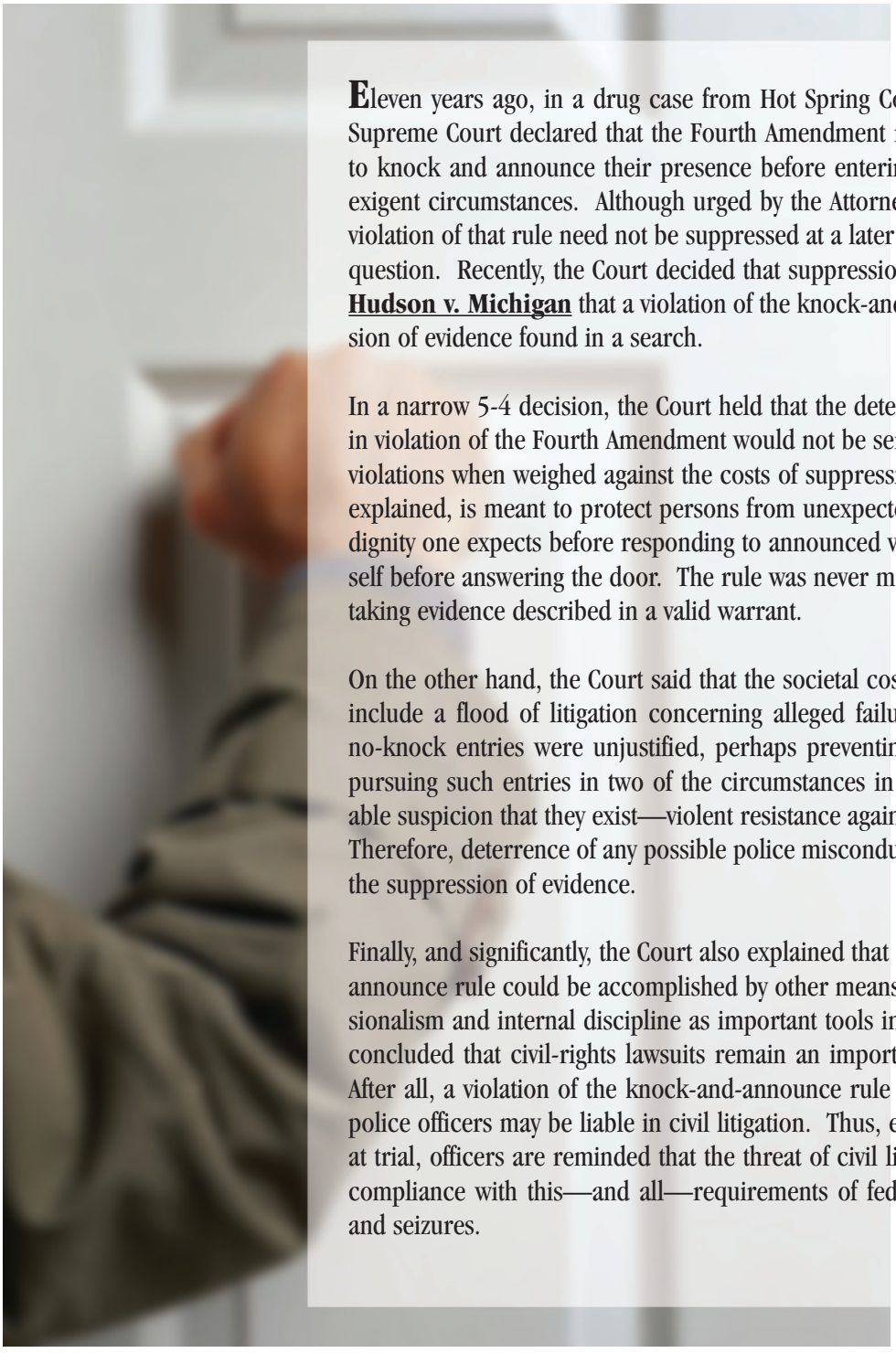
Four police officers responded to reports of a loud party at 3:00 a.m. at a home in Brigham City, Utah. They heard shouting inside, saw juveniles drinking beer in the backyard, and saw, through the screen door and windows, an altercation in the kitchen. A juvenile swung a fist at one of four adults who were trying to restrain him, hitting one man and injuring him. After watching the melee progress further as the adults tried to restrain the juvenile, an officer opened the screen door and announced his presence. When no one responded, the officers entered and stopped the altercation. Some of the occupants were charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication.

In **Brigham City, Utah v. Stuart**, the United States Supreme Court decided that the officers' entry into the home was "plainly reasonable under the circumstances" because they had an objectively reasonable basis for believing that the injured person needed help and that the violence might escalate. The Fourth Amendment did not require police to wait until someone was injured more seriously before entering. As the Court said, "The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided." The Court found that the manner of entry also was reasonable and that it did not violate the Fourth Amendment's knock-and-announce rule, as "the officer's announcement of his presence was at least equivalent to a knock on the screen door."

While this case was decided only under the Fourth Amendment to the federal constitution, the Arkansas Supreme Court has in recent years decided that the Arkansas Constitution provides different protections to home occupants. However, it is unlikely that the Arkansas Supreme Court would decide this issue differently under state law. The Court has stated—and Arkansas Rule of Criminal Procedure 14.3 provides—that officers may enter premises without a warrant if they have reasonable cause to believe that a person within is in imminent danger of death or serious bodily harm. For that reason, **Brigham City** not only reflects the law under the Fourth Amendment, but also likely reflects it under the Arkansas law as well.

# United States Supreme Court
## Upholds Use of Evidence Seized in Violation of Knock-and-Announce Rule

By David Raupp, Senior Assistant Attorney General



Eleven years ago, in a drug case from Hot Spring County, **Wilson v. Arkansas**, the United States Supreme Court declared that the Fourth Amendment requires officers armed with a search warrant to knock and announce their presence before entering a residence to execute the warrant, absent exigent circumstances. Although urged by the Attorney General to conclude that evidence seized in violation of that rule need not be suppressed at a later criminal trial, the Court declined to reach that question. Recently, the Court decided that suppression point in favor of the government, holding in **Hudson v. Michigan** that a violation of the knock-and-announce rule does not require the suppression of evidence found in a search.

In a narrow 5-4 decision, the Court held that the deterrent purposes of suppressing evidence seized in violation of the Fourth Amendment would not be served by its application to knock-and-announce violations when weighed against the costs of suppression. The knock-and-announce rule, the Court explained, is meant to protect persons from unexpected, forcible entries that invade the privacy and dignity one expects before responding to announced visits—in short, the opportunity to collect oneself before answering the door. The rule was never meant to prevent the government from seeing or taking evidence described in a valid warrant.

On the other hand, the Court said that the societal costs of suppression were too great. They would include a flood of litigation concerning alleged failures to knock and announce and claims that no-knock entries were unjustified, perhaps preventing officers (due to fear of suppression) from pursuing such entries in two of the circumstances in which the rule can be suspended on reasonable suspicion that they exist—violent resistance against the officers and the destruction of evidence. Therefore, deterrence of any possible police misconduct due to violations of the rule is not served by the suppression of evidence.

Finally, and significantly, the Court also explained that deterring police from violating the knock-and-announce rule could be accomplished by other means. In addition to the value of increased professionalism and internal discipline as important tools in remedying police misconduct, the Court also concluded that civil-rights lawsuits remain an important tool in deterring constitutional violations. After all, a violation of the knock-and-announce rule is, in fact, a constitutional violation for which police officers may be liable in civil litigation. Thus, even in the absence of suppression of evidence at trial, officers are reminded that the threat of civil litigation should be incentive enough to ensure compliance with this—and all—requirements of federal and state law when conducting searches and seizures.

# Attorney General Mike Beebe's
## 2006 Outstanding Law-Enforcement Officers of the Year Awards

On October 11, 2006, Attorney General Mike Beebe will host the fourth-annual Law Enforcement Summit, focused on child victimization, with an emphasis on computer-facilitated crimes against children. At the Summit, General Beebe will honor outstanding law-enforcement officers who have been nominated for acts of valor performed in the line of duty and/or meritorious job performance within the last eighteen months. Nominations are now being accepted for the 2006 Officer of the Year Awards.

Each department's nomination will be reviewed by the Attorney General's Selection Committee of law-enforcement officers from around the state. Four (4) individual nominees who have honored the profession in the most outstanding manner – one from each congressional district – will be selected as the Attorney General's 2006 Law-Enforcement Officers of the Year. The same process will be used to determine one individual, selected from all of the nominations, as the Attorney General's 2006 State of Arkansas Law-Enforcement Officer of the Year.

**Each nomination must include the following:**

1) The name, agency, or department, and full contact information for the commanding officer who is making the nomination;

2) Name, rank, position, and department or agency the nominee is assigned to serve, as well as the total number of years he or she has served as a sworn Arkansas law-enforcement officer and total number of years in law enforcement;

3) A personal letter to Attorney General Beebe detailing the act of valor performed in the line of duty and/or details explaining the meritorious job performance of the nominee. Each letter should be limited to no more than two pages in length.

You may attach copies of background materials or media clippings to substantiate your nomination.

You may also attach a photograph of the nominee. This photograph will not be used in the selection process, but in developing a visual presentation of all nominees to be shown on the day of the Summit. All photographs must be labeled on the back with the nominee's name, rank, and department.

Each nomination must be received by the Office of the Attorney General no later than Thursday, August 10, 2006. Nominations should be mailed to the following address:

**Attorney General Mike Beebe**
Community Relations Division
323 Center Street, Suite 1100
Little Rock, Arkansas 72201

If you have questions, please contact Carol Robinson at (501) 682-3654 or by e-mail at carol.robinson@arkansasag.gov.

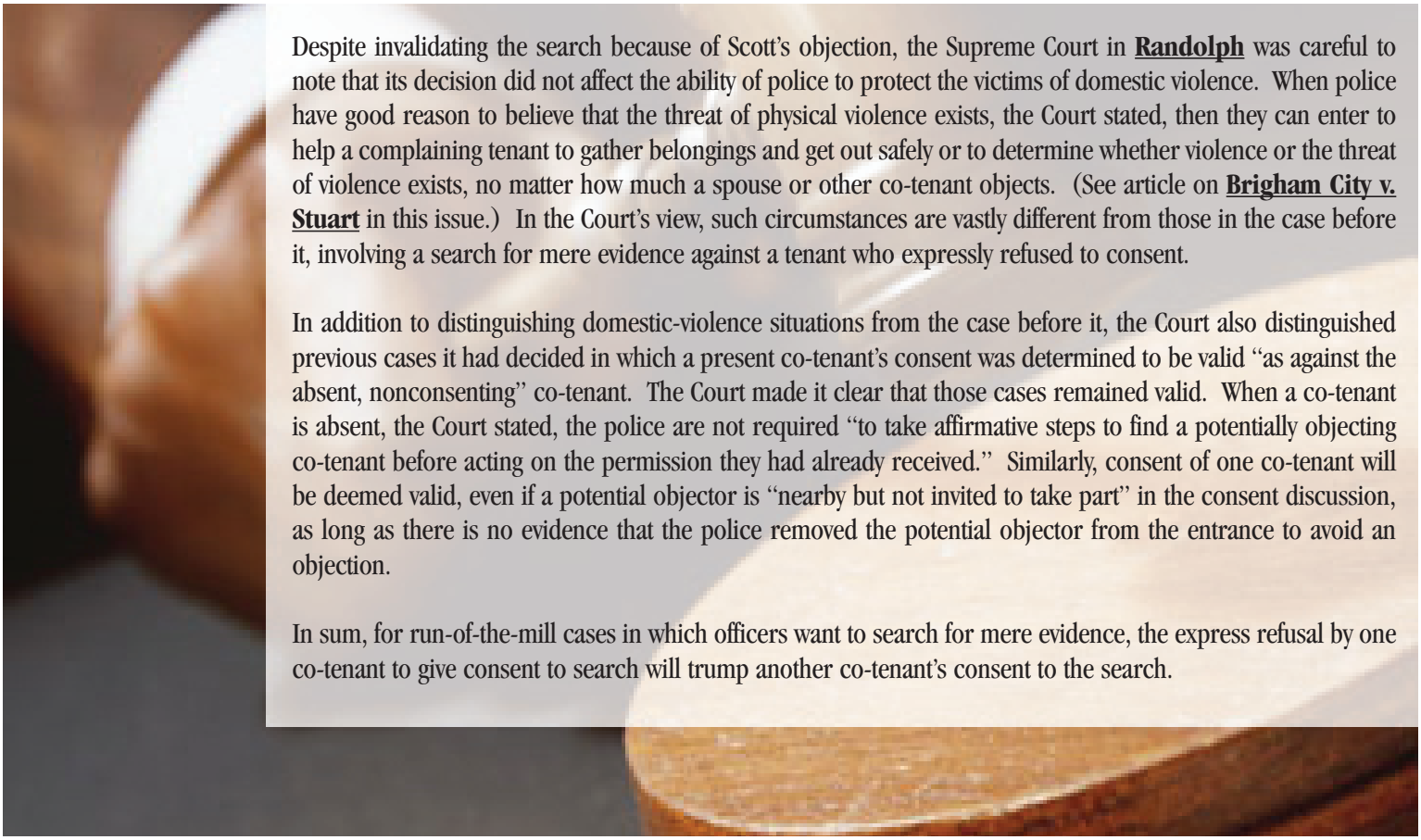
# Present Co-Tenant's Refusal to Allow Consent Search

## *Bars Warrantless Search of House*

By Vada Berger, Assistant Attorney General

On the morning of July 6, 2001, Janet Randolph complained to police officers in Americus, Georgia, that her estranged husband, Scott Randolph, had taken their child away. Upon the officers' arrival at the Randolph house, Janet also told the police that Scott was a cocaine user. After Janet and one of the officers returned from retrieving the Randolphs' child, Janet repeated that Scott was a drug user, adding that drug evidence was in the house. An officer asked Scott for permission to search the house, but he refused. When the officer asked Janet for consent, she gave it and led him to a bedroom she identified as Scott's, where the officer seized part of a drinking straw with suspected cocaine on it. The police relied on the straw to obtain a warrant to search the Randolphs' house, leading to the discovery of additional drug evidence and Scott's indictment for possession of cocaine.

The Georgia trial court refused to suppress the evidence, concluding that Janet had the authority to consent to the search. Two state appellate courts disagreed, however, as did the United States Supreme Court. That Court held in **Georgia v. Randolph** that, under the Fourth Amendment, "a physically present inhabitant's express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant." In other words, the Court held that evidence seized over Scott's express refusal to consent could not be used against him at trial, despite his co-tenant's consent. This holding is directly contrary to a previous decision by the Arkansas Supreme Court, and, thus, as a practical matter, overrules it.



Despite invalidating the search because of Scott's objection, the Supreme Court in **Randolph** was careful to note that its decision did not affect the ability of police to protect the victims of domestic violence. When police have good reason to believe that the threat of physical violence exists, the Court stated, then they can enter to help a complaining tenant to gather belongings and get out safely or to determine whether violence or the threat of violence exists, no matter how much a spouse or other co-tenant objects. (See article on **Brigham City v. Stuart** in this issue.) In the Court's view, such circumstances are vastly different from those in the case before it, involving a search for mere evidence against a tenant who expressly refused to consent.

In addition to distinguishing domestic-violence situations from the case before it, the Court also distinguished previous cases it had decided in which a present co-tenant's consent was determined to be valid "as against the absent, nonconsenting" co-tenant. The Court made it clear that those cases remained valid. When a co-tenant is absent, the Court stated, the police are not required "to take affirmative steps to find a potentially objecting co-tenant before acting on the permission they had already received." Similarly, consent of one co-tenant will be deemed valid, even if a potential objector is "nearby but not invited to take part" in the consent discussion, as long as there is no evidence that the police removed the potential objector from the entrance to avoid an objection.

In sum, for run-of-the-mill cases in which officers want to search for mere evidence, the express refusal by one co-tenant to give consent to search will trump another co-tenant's consent to the search.

# AG Opines Game and Fish Commission Is Law Enforcement Agency for FOIA Purposes

By David Raupp, Senior Assistant Attorney General

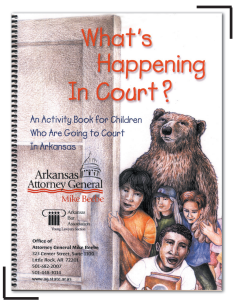
In response to a request from the Director of the Arkansas Game and Fish Commission (AGFC), the Attorney General recently said in an official opinion, No. 2006-094, that the Commission is a law-enforcement agency that may avail itself of the ongoing-investigation exemption of the State's Freedom of Information Act (FOIA). The Director's request for an opinion followed media-outlet requests for documents concerning an incident involving an employee of AGFC and a former United States Marshal.

The opinion first determined that AGFC is a law-enforcement agency for purposes of the FOIA because, among other things, the State Constitution vests AGFC personnel with arrest powers for AGFC violations. State law also vests AGFC personnel with general arrest powers as certified law-enforcement officers, a point that previous AG opinions have made.

Next, the opinion generally addressed the scope of the ongoing-investigation exemption, reaffirming three important points from case law and previous opinions. First, as is true for other agencies, AGFC may invoke the exemption when documents in its possession relate to open investigations by other agencies, which AGFC maintained was the case in the incident about which the Director inquired.

Second, the exemption covers only documents in an "undisclosed investigation" that are "sufficiently investigative." As to undisclosed investigations, the opinion explained that the term, as interpreted by the courts, means "ongoing investigations" conducted by law-enforcement agencies. Not all documents associated with such investigations, however, are sufficiently investigative. A great deal of routinely collected information—such as arrest records, shift sheets, and booking and arrestee information often found in so-called incident reports—has been found by the courts not to be investigative for purposes of the exemption.

Finally, the opinion explained that the scope of the exemption and the meaning of "sufficiently investigative" as to particular information is always a fact-bound determination that must, in the first instance, be made by the custodian of the particular document sought under the FOIA. The Attorney General's Office is neither permitted nor equipped to make those determinations, as they first must be made by a custodian and are then subject to challenge in court pursuant to the FOIA.




## What's Happening In Court?
### A Child's Guide To Navigating The Court System.

Attorney General Mike Beebe is pleased to announce the availability of "What's Happening in Court? An Activity Book for Children Going to Court in Arkansas." This booklet was compiled with the help of the Young Lawyers Section of the Arkansas Bar Association and the Arkansas Case Coordinators' Association. Our goal is to make the experience of going to court easier for all children to understand.

Please use the form below to order the number of copies of this booklet for your organization. If you have any questions, call Carol Robinson at 1-800-448-3014 or (501) 682-3654.

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Fax this form to:

Office of Attorney General Mike Beebe | Attention: Community Relations Division
323 Center Street, Suite 1100 | Little Rock, AR 72201 | FAX (501) 682-6704

# SUSPECTED FAMILY ABDUCTION

**Case Number:** NCMC1044218

Circumstances: Jacob was abducted on May 5, 2006, by his non-custodial father, Paul Pack. A felony warrant was issued for the abductor on May 16, 2006. The abductor has a tattoo on one arm.

**Abductor**
DOB: October 29, 1970
Sex: Male
Race: White
Hair: Light Brown
Eyes: Green
Height: 6'0" (183 cm.)
Weight: 150 lbs. (68 kg.)

**JACOB ADAM PACK**

Case Type: Family Abduction

DOB: Sep 30, 2003
Sex: Male
Missing Date: May 5, 2006
Race: White

Age Now: 2
Height: 2'6" (76 cm.)
Missing City: Canehill
Weight: 25 lbs. (11 kg.)
Missing State: AR
Hair Color: Light Brown
Missing Country: United States
Eye Color: Blue

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